

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Crim. Action No.: 1:20CR35  
(Judge KleeH)

PHILLIP W. CONLEY,

Defendant.

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION  
CONCERNING PLEA OF GUILTY IN FELONY CASE [DKT. NO. 32],  
ACCEPTING GUILTY PLEA, AND SCHEDULING SENTENCING HEARING

On June 28, 2021, the Defendant, Phillip W. Conley ("Conley"), appeared before United States Magistrate Judge Michael J. Aloï and moved for permission to enter a plea of **GUILTY** to Count Seven of the Indictment, charging him with Securities Fraud, in violation of Title 15, United States Code, Sections 78j(b) and 7ff(a) and Title 17, Code of Federal Regulations, Section 240.10-b5. Conley stated that he understood that the magistrate judge is not a United States District Judge, and Conley consented to pleading before the magistrate judge. This Court referred Conley's plea of guilty to the magistrate judge for the purpose of administering the allocution, pursuant to Federal Rule of Criminal Procedure 11, making a finding as to whether the plea was knowingly and voluntarily entered, and recommending to this Court whether the plea should be accepted.

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Based upon Conley's statements during the plea hearing, and the Government's proffer establishing that an independent factual basis for the plea existed, the magistrate judge found that Conley was competent to enter a plea, that the plea was freely and voluntarily given, that Conley was aware of the nature of the charges against him and the consequences of his plea, and that a factual basis existed for the tendered plea. The magistrate judge issued a *Report and Recommendation Concerning Plea of Guilty in Felony Case* ("R&R") [Dkt. No. 32] finding a factual basis for the plea and recommending that this Court accept Conley's plea of guilty to Count Seven of the Indictment.

The magistrate judge **remanded** Defendant to the custody of the United States Marshals Service.

The magistrate judge also directed the parties to file any written objections to the R&R within fourteen (14) days after service of the R&R. He further advised that failure to file objections would result in a waiver of the right to appeal from a judgment of this Court based on the R&R. Neither Conley nor the Government filed objections to the R&R.

Accordingly, this Court **ADOPTS** the magistrate judge's R&R [Dkt. No. 32], provisionally **ACCEPTS** Conley's guilty plea, and

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**ADJUDGES** him **GUILTY** of the crime charged in Count Seven of the Indictment.

Pursuant to Fed. R. Crim. P. 11(c)(3) and U.S.S.G. § 6B1.1(c), the Court **DEFERS** acceptance of the proposed plea agreement until it has received and reviewed the presentence investigation report prepared in this matter.

Pursuant to U.S.S.G. § 6A1 et seq., the Court **ORDERS** the following:

1. The Probation Officer shall undertake a presentence investigation of Conley, and prepare a presentence investigation report for the Court;

2. The Government and Conley shall each provide their narrative descriptions of the offense to the Probation Officer by **August 2, 2021**;

3. The presentence investigation report shall be disclosed to Conley, his counsel, and the Government on or before **October 1, 2021**; however, the Probation Officer shall not disclose any sentencing recommendations made pursuant to Fed. R. Crim. P. 32(e)(3);

4. Counsel may file written objections to the presentence investigation report on or before **October 15, 2021**;

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5. The Office of Probation shall submit the presentence investigation report with addendum to the Court on or before **October 29, 2021**; and

6. Counsel may file any written sentencing memorandum or statements and motions for departure from the Sentencing Guidelines, including the factual basis for the same, on or before **November 12, 2021**.

The Court further **ORDERS** that prior to sentencing, counsel for Defendant review with him the revised Standard Probation and Supervised Release Conditions adopted by this Court on November 29, 2016, pursuant to the standing order entered by Chief Judge Groh, In Re: Revised Standard Probation and Supervised Release Conditions, 3:16-MC-56.

The Court will conduct the **Sentencing Hearing** for Conley on **December 3, 2021**, at **11:00 a.m.**, at the **Clarksburg, West Virginia** point of holding court. Counsel has notified the Court that they anticipate multiple witnesses. Accordingly, the Court expects the hearing to last three (3) hours.

Additionally, pending before the Court is the *United States' Motion for Zoom Link*. [Dkt. No. 33]. For reasons stated therein and pursuant to the "Order" entered in Fifth Extension of

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Authorization for Remote Proceedings in Criminal Case Operations  
Due to COVID-19 Response [3:20mc28, ECF No. 6], the Court **GRANTS**  
the government's motion [Dkt. No. 33] and provides the following  
**Zoom video conference link**, with an option to participate  
telephonically. Participants referenced in the government's motion  
may access the sentencing hearing as follows:

**By Video**

<https://www.zoomgov.com/j/1615393258?pwd=RytYTGFhejlLTy9VRHFNVThnZ3o1QT09>

Meeting ID: 161 539 3258

Passcode: 476312

**By Telephone**

+1 646 828 7666 US (New York)

+1 551 285 1373 US

Meeting ID: 161 539 3258

Passcode: 476312

It is so **ORDERED**.

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The Clerk is directed to transmit copies of this Order to  
counsel of record and all appropriate agencies.

DATED: July 26, 2021

/s/ Thomas S. Kleeh  
THOMAS S. KLEEH  
UNITED STATES DISTRICT JUDGE